

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, <i>ex rel.</i>)	
State Engineer,)	
)	
Plaintiff,)	
)	69cv07941-MV/KK
-v-)	
)	RIO CHAMA STREAM SYSTEM
RAMON ARAGON, <i>et al.</i> ,)	
)	Section 3, Rio Cebolla
Defendants.)	
_____)	

RESPONSE
OF THE ASOCIACIÓN DE ACÉQUIAS NORTEÑAS DE RIO ARRIBA,
THE ACÉQUIA MADRE DE CEBOLLA AND THE ACÉQUIA DE PINAVETAL
TO PROPOSED SCHEDULING AND PRETRIAL ORDER

The Asociación de Acéquias Norteñas de Rio Arriba (“Acéquias Norteñas”), the Acéquia Madre de Cebolla and the Acéquia de Pinavetal, on their own behalf and on behalf of their members (collectively the “Acéquias”), submit this response pursuant to the Court’s *Order Denying Motions for Pretrial Conference* (Doc. 11324, filed 01/26/18). This filing responds to the State’s *Motion for Entry of Proposed Scheduling and Pretrial Order in the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System* (Doc. 11329, filed 02/15/18) (“State’s Motion”) and the State’s *[Proposed] Scheduling and Pretrial Order for the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System* (Doc. 11329-1, filed 02/15/18) (“Proposed Pretrial Order”). The Acéquias are participants in this subsection proceeding based on their *Objections to Proposed Irrigation Requirements* (Doc. 11309, filed 12/11/17) (“Acéquias’ Objections”).

I. SCOPE OF PROCEEDING AND SCHEDULING

The Acéquias agree with the State's description of the Scope of Proceeding set forth in the Proposed Pretrial Order.

It is the Acéquias position that they are proper parties to the adjudication. They have participated in this adjudication for decades and intend to continue to participate. Their participation in the adjudication serves an important community and representational function when common elements such as priority dates and irrigation requirements are in question. Many individual parcientes look to and rely on those entities to promote those common interests. Specifically, the Acéquias request that the Court not adopt the Proposed Pretrial Order's requirement that "no later than 60 days from the entry of this order, the Acequias will file a Statement indicating which individual water right owners have authorized the Acequias to act on their behalf and demonstrating that the Acequias have obtained the approval of each affected individual water right owner in support of the specific CIR, FDR, and PDR proposed by the Acequias." *Id.* at 8. Such a requirement would place an unnecessary burden on the Acéquias and impede their ability to participate in the adjudication. In order to satisfy such a requirement, the Acéquias would need a lengthy period of time to conduct public meetings and individual meetings with individual parcientes.

In the instant proceeding, the Acéquias filed objections to irrigation requirements and undersigned counsel did not file objections to priority dates. With respect to irrigation requirements, the State and the Acéquias Norteñas recently completed a successful resolution of that issue in the Tierra Amarilla Subsection. State's *Motion for Order Making Final Determination of Irrigation Water Requirements* (Doc. 11273, 08/09/17) and *Stipulation by Tierra Amarilla Community Ditch and Acéquias Norteñas* (Doc. 11273-1, 08/09/17). As

described in the Acéquias' Objections, the Acéquias believe that such a resolution and stipulation can be reached here. One of the bases for resolution was a ditch capacity and efficiency survey conducted by the hydrologist for the Acéquias Norteñas and the Tierra Amarilla Community Ditch that supported the efficiency assumptions made by the State in its proposed Project Diversion Requirement for the Tierra Amarilla Community Ditch. Given the success of that process, the Acéquias Norteñas have directed their hydrologist to conduct such a survey this year for all of the association's remaining 17 member ditches. Because the survey is best completed during the irrigation season, the hydrologist's work in Cebolla will not be completed until mid-summer.

II. PRE-TRIAL PROCEEDINGS

In the event the Court directs the Acéquias to submit a "Statement" of authorization from every "affected individual water right owner", deadlines for discovery, pretrial disclosures, dispositive motions and other pretrial filings should be delayed until that process is complete. If the Court does not impose that requirement, then the Acéquias agree that a schedule for pre-trial proceedings should be entered by the Court, and the Acéquias request that the schedule accommodate sufficient time for them to complete the process that proved successful in the Tierra Amarilla Subsection. The Acéquias believe a resolution of the irrigation requirements issues could be achieved by the end of this summer, in a manner as described in the Acéquias' Objections.

With respect to establishment of burden of proof and agreements on stipulations and contentions, those matters should be finalized later in this proceeding, if necessary.

Respectfully Submitted,

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Electronically Filed

BY: /s/ John W. Utton
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de Pinavetal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of March 2018, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

BY: /s/ John W. Utton
JOHN W. UTTON